

2012

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**PLANNING AND DEVELOPMENT (PUBLIC NOTIFICATION) AMENDMENT BILL
2012**

EXPLANATORY STATEMENT

**Circulated by
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INTRODUCTION

This explanatory statement relates to the Planning and Development (Public Notification) Amendment Bill 2012 as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the bill and to help inform debate on it. It does not form part of the bill and has not been endorsed by the Assembly. The Statement must be read in conjunction with the bill. It is not, and is not meant to be, a comprehensive description of the bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

OVERVIEW

The Planning and Development (Public Notification) Amendment Bill, “the Bill” has been developed in response to community feedback on a number of issues relating to public involvement and interest in the ACT planning system.

The Bill does 5 key things in relation to extending public notification and information requirements:

- Requires written notice of proposals for deconcessionalisation to houses within 500m of the site;
- Requires written notice of draft variations to the Territory Plan to houses within 500m of the site if the variation contains a proposal for a change of zone;
- Moves proposals for the building of single dwelling houses in existing suburbs from being exempt from the need for development approval into the Code track;
- Requires public notification for single dwelling proposals in the Code track; and
- Inserts a requirement for signage at building sites of single dwellings in existing suburbs to give information about where the approved building plans can be examined.

The Bill also extends the period before regulations made under the Planning and Development Act can commence, to ensure that the disallowance period in the Legislative Assembly has passed. At present, when a planning regulation is notified, it generally commences the next day. The Minister then has 6 sitting days to table it in the Assembly, and then there is a 6 sitting day disallowance period, where the Assembly can move a motion to disallow the regulation. This Bill proposes that regulations cannot commence until after the disallowance period has passed.

Public notification requirements for deconcessionalisation

This Bill requires that houses within 500m of the perimeter of the site proposed for deconcessionalisation be notified by mail of the proposal. At present only houses immediately adjoining the site proposed for deconcessionalisation are notified by mail. However, the impacts of removing a concessional lease can be suburb-wide, or larger.

Note also that making a representation on the development proposal is a requirement that, providing they may also suffer a material detriment from the development, enables a person to apply to ACAT for review of a decision.

Public notification requirements for Draft Variations to the Territory Plan

At present Draft Variations to the Territory Plan are required to be notified through a public notice in the newspaper. This Bill proposes that if a Draft Variation includes a change to a zone, houses within 500m of the site for which the zone change is proposed must be notified by mail. Unfortunately it is fairly common that nearby residents are unaware of the proposal in a timely manner, and hence are unable to lodge representations to the process.

Require Code track approval of construction of single dwelling houses in existing areas

When the *Planning and Development Act 2007* commenced in 2008, the construction of single dwelling houses in existing suburbs were in the Code track, and the construction of single dwelling houses in new suburbs were exempt from the need for development approval. In April 2009, the *Planning and Development Regulation* was amended to include single dwelling houses in existing areas as exempt from development approval instead of needing Code track approval. This change has caused many residents concern, as residents are unable to view the plans or comment on the proposal. This Bill returns those single dwellings in existing suburbs to the Code track, which will ensure that ACTPLA are able to assess the plans against the Residential Zones Single Dwelling Housing Development Code.

Increase notification for certain code track developments

Single dwelling houses are currently exempt from development approval and can be demolished and built in existing areas under the current legislation with no public notification and without their plans being assessed by ACTPLA.

Development applications in the Code track are currently not required to be publicly notified. This Bill ensures that applications for single dwelling houses in existing suburbs will need minor public notification under s.153 - public notice to adjoining premises.

Make plans for single dwelling proposals available to the public for inspection

All single dwellings are currently exempt from needing development approval. This means that neighbours and other affected bodies do not get to see the plans for a building, and in fact, often do not know in advance that a demolition and construction is going to occur.

Amendments made last year to the *Building Act 2004* by the *Planning and Development Legislation Amendment Bill (No 2) 2011*, "PABLAB 2", require a sign to be erected at such building sites that outlines the type of work to be undertaken and provides builder contact details. This Bill extends the signage requirements to also require information to be shown about where copies of the plans are available for public inspection.

This is largely a transitional provision because once single dwellings in existing suburbs are moved into Code track, they will be publicly notified, and neighbours will know of the plans. Note that the regulations from PABLAB 2 have not yet been finalised, and thus have not yet commenced. Thus the provisions in relation to extending the signage requirements will not commence until the later of either the commencement of the rest of this Bill, or the commencement of the Regulations relating to PABLAB 2.

HUMAN RIGHTS

The Bill engages the right to take part in public life. The Bill ensures that a broader group of people are provided with the information which will allow them to take part in the public consultation process for development applications. Further the Bill adds to the list of reviewable decisions for which applications can be made to the ACAT to review a decision. Whilst it could be said that the limit imposed on the extent of the notification requirement could limit the rights of those not caught by the provisions, it must be noted that the proposals significantly extend the current scheme and a limit must be drawn at some point. The limits proposed strike a reasonable balance between the reasonable likelihood of someone being affected by the proposal and the administrative burden of implementing the scheme.

It could also be said that in relation to the construction of single residential dwellings that the Bill limits the right to privacy because of the additional notification and assessment provisions for what are primarily people's homes. Any limitation to the right to privacy is justifiable as it only operates to the extent necessary to ensure that the regulatory requirements are complied with and that the competing community interests are fairly balanced and decisions in the broader public interest made.

NOTES ON CLAUSES

Part 1 Preliminary

Clauses 1-3 – Name of Act, Commencement and Legislation amended

These are preliminary clauses setting out the name of the amending act, the acts and regulations amended and the commencement date.

The Bill is to commence either on a day fixed by the Minister, or at the latest, 6 months after notification. The clause relating to Schedule 1 of the *Building (General) Regulation 2008*, will not commence until the later of either the commencement of the rest of this Bill, or the commencement of the Regulations relating to PABLAB 2.

Part 2 Planning and Development Act 2007

Clause 4 – Public consultation – notification, New section 63 (5A)

This clause provides that if a draft variation to the Territory Plan is a variation that proposes a change of zone, ACTPLA must give a copy of the consultation notice to all lessees within 500m of the perimeter of the zone that is proposed to be amended by the variation. This clause does not apply in the case of technical amendments.

Clause 5 – New section 63(7)

This clause defines the term lessee for the purposes of section 63. Lessee is defined in the existing section 234 as the person who is the proprietor of a lease, whether or not the person is the registered proprietor (the person who is registered under the *Land Titles Act 1925* as proprietor of the lease) of the lease, and regardless of how the person became the proprietor of the lease. Using the term lessee as defined recognizes that while it may be desirable for ACPLA to notify owners as well as tenants it is not reasonable to require ACTPLA to do title searches for all proprietors within 500m of the proposed variation.

Clause 6 – Code track – notification, right or review, governmental consultation and reconsideration, Section 117 (a)

This clause provides that if a development application is in the code track it must be publicly notified under division 7.3.4. which sets out the specific requirements for how notification must be undertaken.

Clause 7 – Declaration by Public Health Act Minister affects assessment track, Section 125 (1)(c), note

This note is being deleted as it is no longer correct.

Clause 8 – What is *publicly notified* for ch 7?, New section 152(1)(aa)

This clause is consequential on clause 6 and sets out that code track developments must be notified under section 153 - minor public notification. In effect this requires a letter to the adjoining properties.

Clause 9 – New section 152 (1)(b)(iii)

This clause prescribes that public notification of applications for a lease variation to remove the concessional status from a concessional lease (deconcessionalisation) is notified under new section 154A (see clause 10).

Clause 10 – Section 152 (2)(a) and (b)

This clause effectively adds to the existing requirements in section 152(2)(a) and (b) by inserting new subsections (a)(ii) and (b)(ii) which provide for public notification of development proposals that include applications for deconcessionalisation. Consistent with the current provisions the effect of the clause is to allow the regulations to prescribe the type of notification but in either case where an proposal includes an application for deconcessionalisation ACTPLA will be required to comply with the new notification provisions set out in proposed new section 154A (see clause 10).

Clause 11 – New section 154A

This clause inserts a new requirement for public notice for applications for deconcessionalisation. The clause requires that for such applications ACTPLA must give written notice that to each lessee within 500m of the perimeter of the site being proposed for deconcessionalisation.

Additionally the clause requires that if ACTPLA becomes aware that a public notification is defective in a way that is likely to unfavorably affect or restrict a person's ability to participate in the notification process they must reissue the public notice under subsection (2)

However as is the case with the current sections 153, 154 and 155, should ACTPLA fail to comply with this section the decision made in relation to the application remains valid.

As is the case in clause 5 lessee is defined by reference to section 234.

Clause 12 – Regulation-making power, New section 426 (6) and (7)

This clause limits the regulation making power delegated to the executive to make regulations under the Act and provides that section 73 of the *Legislation Act 2001* does not apply to regulations made under the *Planning and Development Act 2007*. Regulations will not be able to commence until 6 sitting days after the regulations have been presented in the Legislative Assembly. This effectively means that the period for disallowance by the Assembly set out in the *Legislation Act 2001* section 65 must have expired before the regulations can commence.

Clause 13 – Reviewable decisions, eligible entities and interested entities, Schedule 1, item 4, column 2

This clause provides that a development decision that involves the deconcessionalisation of a concessional lease under the proposed new section 154A is a reviewable decision. This means that entities who have made representations about the development proposal (or had a reasonable excuse for not making a representation) and who are likely to suffer a material detriment from the approval of the development may apply to the ACAT for review of the decision.

Part 3 Planning and Development Regulation 2008

Clause 14 – Exempt developments – Act, s.133, def *exempt development*, par (c), Section 20 (6)(c)

This clause amends the reference to modification, variation or composite developments resulting in non-compliance in developments exempt from development approval, clarifying that this only relates to single dwellings on new residential land, not on sites which have previously had a single residential dwelling.

Clause 15 – New section 27A

This clause specifies that public notification of code track developments is only required for applications for the approval of building or demolition of a single dwelling on a block where there has previously been a single dwelling.

Clause 16 – When development approvals do not require amendment – Act, s 198C (2), Section 35(4)(c)

This clause amends the reference to schedule 1, section 1.100, noting that if a change to a development proposal is made after a development is approved, that development approvals do not need to be amended if they are consistent with the requirements relating to single dwellings on new residential land, rather than all single dwellings.

Clause 17 – Schedule 1, section 1.100 heading

This is a change to the title of the section, clarifying that the exemption for development approvals is only for compliant single dwellings on new residential land, not all single dwellings. This reverts the exemption back to the original situation when the *Planning and Development Act 2007* commenced in 2008, where only single dwellings on new residential land were exempt from development approval.

Clause 18 – Schedule 1, section 1.100(1)

Section 1.100 (1) currently exempts the building or altering of a single dwelling on a block from requiring development approval if the dwelling will be the only dwelling on the block, whether or not another dwelling has previously been on the block. This clause amends schedule 1, section 1.100 (1) to provide that only single dwellings on new residential land are exempt from development approval, provided the dwelling complies with the relevant development approval exemption rules. This amendment reverses the amendment of the provision made by Planning and Development Amendment Regulation 2009 (No 5) (SL 2009-15) which broadened the exemption for development approval to all single dwellings.

Clause 19 – Schedule 1, section 100(4), definition of *prescribed general exemption criteria*

The definition for 'prescribed general exemption criteria' previously only appeared in s1.100 (1). The new s1.100 (1) does not include a reference to that term so the definition is no longer needed.

Clause 20 – Schedule 1, section 1.100A

Section 1.100A currently exempts the building of a single dwelling or alteration of the dwelling on a residential block from requiring development approval if the building of the dwelling or alteration would be exempt under s 1.100 even though the actual construction would result in a minor breach of the relevant development approval exemption rules. This clause amends the section to remove the exemption in relation to single dwelling houses on existing residential land.

Schedule 1 – Consequential amendment – *Building (General) Regulation 2008*

[1.1] – New section 30A(c)(viii)

This clause amends the Building Regulation to insert a new provision requiring signs on properties which are to have a single dwelling constructed in an existing suburb to include information outlining where a copy of the plans for the development may be inspected.